

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



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## Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

No. 1716.

454

THE IRRIGATION LAND AND IMPROVEMENT COM-  
PANY, A CORPORATION, APPELLANT,

vs.

ETHAN ALLEN HITCHCOCK, SECRETARY OF THE  
INTERIOR OF THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED AUGUST 10, 1906.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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# In the Court of Appeals of the District of Columbia.

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No. 1716.

THE IRRIGATION LAND AND IMPROVEMENT COMPANY, a Corporation,  
Appellant,

vs.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior of the United  
States.

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a Supreme Court of the District of Columbia.

No. 25864. In Equity.

THE IRRIGATION LAND AND IMPROVEMENT COMPANY, a Corporation,  
Plaintiff,

vs.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior of the United  
States, Defendant.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, That in the Supreme Court of the District of  
Columbia, at the city of Washington, in said District, at the times  
hereinafter mentioned, the following papers were filed and proceed-  
ings had in the above-entitled cause, to-wit:—

1 *Bill of Complaint.*

Filed November 24, 1905.

In the Supreme Court of the District of Columbia, on the Twenty-  
fourth Day of November, 1905.

No. 25864. Eq.

THE IRRIGATION LAND AND IMPROVEMENT COMPANY, a Corporation,  
Plaintiff,

vs.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior of the United  
States, Defendant.

To the Honorable the Judges of the Supreme Court of the District of  
Columbia, Holding an Equity Court:

The Irrigation Land and Improvement Company, a corporation  
organized and existing under and pursuant to the laws of the Terri-

tory of Arizona and having its principal place of business at Yuma in said Territory, brings this its bill of complaint against Ethan Allen Hitchcock, Secretary of the Interior of the United States, a citizen of the United States, now domiciled and resident in the District of Columbia and to be found therein;

And thereupon your orator complains and alleges:

First. That your orator is and has been ever since the 19th day of May, 1900, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona, with its principal office and place of business in the town of Yuma, Territory of Arizona; that your orator was created with an authorized capital of \$1,000,000, divided into as many equal shares, and has, and at all times  
2 has had, for its objects and purposes, among other things, to build, establish and maintain head-gates, ditches, and reservoirs for the storage of water for the purpose of irrigation within the Territory of Arizona, said water to be taken from the Colorado River and its tributaries, and to lease and sell water to the inhabitants of said territory for purposes of irrigation, and to use the same for irrigating the lands of your orator, and to conduct said waters to and from the lands to be irrigated by a system of canals, aqueducts and ditches.

Second. That the country and lands around and about the village of Yuma, Arizona, lying contiguous to the Colorado River, the same being in the Yuma valley, are dry and arid and require irrigation to produce crops, and your orator selected that region as one offering profitable remuneration and as the one to be developed by its enterprise, and since its organization as a corporation continuously down to the present time, your orator has labored diligently to put in, erect and maintain in the said region an irrigation system which would induce the settlement of the waste country and prove adequate to maintain it in a high state of cultivation when once settled and improved, and your orator now owns and has in operation, and has had for more than three years last past, one hundred and forty miles of canals, ditches and laterals, receiving water from the Colorado River and conveying the same to the lands of its customers to be there used for irrigation. Said region of country was an arid waste when your  
3 orator first started its enterprise, but has since become largely populated solely as the result of the labor and money expended by your orator in building up and maintaining its irrigation system.

Third. Your orator further alleges that its water rights and rights of way and sites for canals, aqueducts, ditches and reservoirs, have been acquired under the laws of the Territory of Arizona and the laws of the United States, by a full and complete compliance by your orator or its grantors, with each and every of the provisions of said laws relating to the appropriation of waters and to the acquisition on and over the public domain of rights of way for canals, aqueducts and ditches and of sites for reservoirs, and that it is now and has been for more than five years, the owner and in possession of the lands occupied by its canals, aqueducts, ditches and reservoirs and of an ample quantity of water from the Colorado River for all of the purposes of

its irrigating system, present and prospective, and that its rights thereto have become vested rights and beyond the power of any individual or of any official to disturb, impair or destroy; that it has located water under the laws of the Territory of Arizona, or has purchased water rights so located by others, and sites and rights of way for reservoirs, canal, ditches and levy sites, as follows:

(a.) An appropriation of one million inches of water, miners' measure, from the Colorado River, to be diverted from said river two and one-half miles below the village of Yuma, in said Territory, in section 30, township 16 south, range 22 east of San Bernardino Meridian near the northeast corner of said section, together with a claim for ample area for a reservoir, which said appropriation was duly made and recorded by one Adam Ludy, December 19, 1888, and by said Ludy sold and assigned to your orator, by deed in writing, dated April 3, 1900.

(b.) An appropriation made by one Greenleaf and others, under the laws of the Territory of Arizona, of 10,000 inches, miners' measure, of the water of the Colorado River, to be taken at a point known as "Guera Fina Slough," about eleven miles below the town of Yuma, and also 100 feet of the right of way down said slough, in a southeasterly direction, a distance of eight miles, which rights, together with a canal, ditch and laterals, constructed and maintained by a corporation known as the "American Canal Company," were thereafter, to wit, on August 7, 1899, assigned to a corporation known as the "Colorado Valley Canal & Levy Co." and thereafter said last named company made a further appropriation of 30,000 miner inches of the water of said river, the points of diversion being designated as follows: (1) Being at a point near Yuma, Yuma County, in said Territory, to be more definitely located by permanent survey. (2) At a point eleven miles southwest of Yuma, in said Territory, and at the head or intake of "Guera Fina Slough," near the point where the section line between sections 17 and 20, township 9, south of range 24 W., G. & S. R. Meridian enters the waters of the Colorado River at low water mark; thence following the course of said slough and its main branches, throughout, southeast; thence south and southeasterly, and to a point of diversion from said slough near the southeast corner of section 4, township 10, range 24 West; thence in an easterly and southerly course to the International boundary line between the United States and the Republic of Mexico, with necessary laterals running east and west from the main canal. (3) Also at another point of diversion from said slough at or near the middle of the north line of section 33, township 9, south of range 24, W. G. & S. R. Meridian, the proposed branch to run east on section line between sections 28 & 33, 27 and 34, 26 and 35, 25 and 36, of township 9, south range 24 west, G. & S. R. Meridian, with laterals running south from main branch; also the right to construct storage reservoirs, to be formed by impounding the overflow waters passing through the Ingalls and Tual lagunas, by the construction of sufficient dams and check gates, at or near the junction of said laguna or slough with the aforesaid Guera Fina Slough, or other convenient or practicable point along said laguna.



And all these sites so acquired by said Colorado Valley Canal & Levy Company were diligently improved and developed by it, after said appropriations, and were thereafter, to wit, on the 29th day of June, 1900, for a valuable consideration, conveyed to your orator, by deed of that date, together with all its rights thereunder. That all of said rights so acquired by your orator it now holds and owns, and has continued to hold, own and maintain and to improve, extend, and develop the same ever since the last named date.

(c.) An appropriation of 50,000 inches of water, miners' measure, from the Colorado River, to be diverted from said river at a point on section 5, township 9, south of range 24 west, G. & S. R. Meridian, about eight miles below the town of Yuma, together with the right to construct and maintain a reservoir on sections 16, 21, 22 and 28

6 in the said township and range, and to construct and maintain a canal or canals from the point of diversion in a south-westerly direction to the international boundary line between the United States and the Republic of Mexico, with which and from which to distribute water for irrigation and other useful purposes, which said appropriation was duly made by the Eureka Canal Company, a corporation organized and existing under the laws of Arizona, November 26, 1900, and thereafter, to wit, on the 29th day of June, 1901, was, for a valuable consideration, sold, assigned, and transferred by said Eureka Canal Company to your orator.

(d.) A location of a strip of land 100 feet wide, 50 feet of which were located on each side of a line drawn in the centre of the lowest ground in the lake known as "Ingalls Laguna," in section 22, township 9, south of range 24, west, G. & S. R. Meridian, beginning at the entrance of said laguna on the west edge of said section; thence in a southeasterly, southerly and southwesterly direction to the exit of said laguna, near the southwest corner of section 22 as aforesaid, which said location was duly made by one F. S. Ingalls as a canal for irrigation purposes, and was thereafter conveyed by him to the said Eureka Canal Company and was by the said Eureka Canal Company on, to wit, the 29th day of June, 1901, for a valuable consideration, sold and conveyed to your orator.

(e.) A location for a right of way for an irrigation canal, ditches and laterals, commencing at or near the southwest corner of Section 15, township 10, south of range 24 west, and running thence south one mile connecting with the Farn ditch near the south corner of section 22, which said location was duly made by one W. H. De Barry and by a deed from said De Barry, of date April 30, 7 1901, was sold, assigned and conveyed to your orator, together with the completed canal, ditch and laterals.

(f.) A location of a reservoir site and canal for irrigating purposes made on the 30th day of April, 1901, by your orator, the same being the reservoir site and canal now used, occupied and maintained by your orator as a part of its irrigating system, and described as follows: Commencing at and including all of the Barr Laguna, situated in Section 34, township 8, south of range 24 west, G. & S. R. Meridian, and section 3, township 9, south of range 24 west, G. & S. R. Meridian; thence following natural channels through what is known



as "Tullys Laguna," "Ingalls Laguna," and "Morales Laguna;" thence in a southwesterly direction through natural channels to the head gate of the American Canal System; and thence following the natural channel or depression of the ground to the international boundary line, to hold and use the same for canal or reservoir purposes.

Fourth. Your orator further alleges that its several grantors, had, prior to the time of transferring said property above mentioned to it, partially developed their canal systems, reservoirs and laterals, and at the time of the said transfers there were over thirteen miles of irrigation canals in operation belonging to them, supplying and irrigating considerable areas of land in said Yuma valley; and that since said transfers your orator has further carried on and developed the said irrigation canals and laterals, and has constructed its own canals, laterals, dams and dam sites, flumes and aqueducts in and  
8 upon and over the Yuma Valley, and has fully and completely covered by its ditches, canals, laterals, aqueducts, flumes and dams, a large part of said valley, and that all of its system was in full and complete operation prior to the 1st day of January, 1902; and that it owns and possesses other property of various kinds, both real and personal, used in connection and appurtenant to its irrigating system, to wit, title in fee to 160 acres of land lying on the bank of the Colorado River in sections 29, 30, 31 and 32, township 16 south of range 22 east of San Bernardino Meridian; 40 miles of telephone fully equipped, roads, bridges, approaches, and a large amount of tools, machinery and equipment for keeping its system in order, including one dredge of the value of \$13,000.

That during the years 1900, 1901, 1902 and 1903, it issued to land owners, and prospective land owners, in said Yuma Valley, water rights for the irrigation of 13,567 $\frac{1}{4}$  acres of land, said water rights being a contract entered into with water users and prospective water users whereby your orator bound itself to furnish water to the persons receiving said water rights at the general rates fixed by your orator for water furnished its customers; and that during said years and since it irrigated lands in said valley to the extent of 5,188 $\frac{1}{2}$  acres, and fully and completely supplied said land owners with water for the purpose of irrigating their said lands.

Your orator further alleges that at the time this company was organized there were 50,000 acres of arid and irrigable land below the point of diversion of the water of the Colorado River used by this

Company, and easily reached by gravity therefrom, and that  
9 its appropriations and purchases of water were made, and said canal system was designed and constructed, with the object and intention of irrigating said entire body of lands; that your orator is and was financially able to carry out said enterprise, and to operate and maintain the same, and has expended in and about the development of its system, in money and the equivalent of money, the sum of about \$360,000, and that its irrigation system is now of the reasonable value of \$500,000.

Fifth. Your orator further shows that under and in pursuance of the laws of the United States your orator filed in the General Land

Office, at Tucson, Arizona Territory, on August 4, 1903, its plats and maps, as required by the said laws, fully setting out the entire system of canals, ditches, reservoirs and laterals of your orator, as then and now constructed and maintained by it; and that thereafter and on October 30, 1903, said map and plat was duly and regularly approved by the Honorable Secretary of the Interior. And your orator further shows that during the years 1899, 1900, 1901 and 1902, your orator and its grantors were and now are in the actual use and occupation of all the canals, ditches, reservoirs and laterals above described, and was and is flowing water over and through the same clear to the international boundary line between the United States and the Republic of Mexico, and was and is irrigating lands over and throughout its system; and your orator further shows that each and every part of said system above described, together with the canals, laterals, lagunas, dams, ditches and flumes are necessary to the full and complete enjoyment and operation of the system of canals of your orator; that the United States Government has at all times

10 fully and completely recognized the rights of your orator, and has allowed divers and sundry parties, too numerous to mention, to prove up on their lands and get patents thereto, by showing and proving that they were taking water from the system of your orator.

And your orator further shows and alleges that it has in all things necessary to its full and complete right, title and enjoyment of all its rights, as above described and set out, fully and completely complied with the laws of Arizona and the laws of the United States; that it is proceeding as rapidly as the needs of the country require and as is consistent with good business judgment, to extend and perfect its system, and will, in the near future, unless hampered, interfered with and prevented by the matters and things hereinafter alleged and set forth, extend and perfect its said system so as to cover and furnish water to the entire body of land lying beneath its canals, being about 50,000 acres; and it alleges that it does not now take, and when its system shall have been completed so as to enable it to furnish water for said entire body of land, it will not take or be required to take, from the channel of the Colorado River, and cannot beneficially use, an amount of water that will appreciably diminish the flow of the said river or interfere in any manner with its navigability.

Sixth. Your orator further alleges that the defendant is the Secretary of the Interior of the United States, and as such has under him a large number of agents and minor officials, who are subject to his direction and control, and who execute his will in matters committed or supposed to be committed by law to his execution; that on, 11 to wit, August 20, 1903, Edmund T. Perkins, one of said agents, by direction of the defendant, made, pursuant to the laws of the Territory of Arizona, an appropriation of 100,000 cubic feet per second of the waters of the Colorado River, in the name and for the benefit of the United States, for purposes of irrigation, said waters to be diverted from the said river at a point on the left bank of the Colorado River about 22¼ miles above Yuma, Arizona, and on or near section 18, township 6, south of range 21 west, G. & S. R.

Meridian, and to be used on Arid lands in the Yuma valley, Arizona Territory, and on to wit, July 8, 1905, J. B. Lippincott, another of said agents, by direction of defendant, made, pursuant to the laws of said territory another and further appropriation of the waters of the Colorado River, in the name of and for the benefit of the United States, the amount of water so appropriated, the point of diversion, the use to be made thereof and the lands upon which the same were to be used, being described in the notice of appropriation, which notice was in the words and figures following:

"J. B. Lippincott, Supervising Engineer, United States Geological Survey, duly authorized by the Secretary of the Interior, for and on behalf of the United States of America, under the provisions of the Act of Congress approved June 17, 1902, (32 Stat. L. 388) claims and appropriates at the point where this notice is posted, all the unappropriated waters of the Colorado River both surface and underflow, more specifically stated as amounting to 3,000 cubic feet per second.

This notice is posted on July 8th, 1905, on a small Mesquite tree on the left bank of the Colorado River in Sec. 14, T. 7 S. R. 12 22 W., G. & S. R. M., being more particularly described as on the line of the proposed laguna dam as now surveyed and located by the Reclamation Service and 15 feet from the southeasterly abutment of said dam.

The water is to be used for irrigation, domestic, power, mechanical and other beneficial uses in and upon the lands situated in Yuma County, Arizona Territory, and located in the following townships, to-wit:—

T. 7 S. R. 22 W., T. 8 S. R. 21 W., T. 8 S. R. 22 W., T. 8 S. R. 23 W., T. 8 S. R. 24 W., T. 9 S. R. 23 W., T. 9 S. R. 24 W., T. 9 S. R. 25 W., T. 10 S. R. 23 W., T. 10 S. R. 24 W., T. 10 S. R. 25 W., all referred to G. & S. R. M. and T. 16 S. R. 21 E., and T. 16 S. R. 22 E., referred to S. B. M., and the said J. B. Lippincott, on behalf of the United States of America, hereby declares that United States of America intends to and will build and maintain at this point on the Colorado River a dam, and that the United States intends to and will construct and maintain a reservoir to extend from the said Laguna dam and covering Secs. 18, 19, 30, and 31 of T. 6 S. R. 21 W., Secs. 6, 7 and 18, of T. 7 S. R. 21 W., Secs. 1, 11, 12, 13 and 14 of T. 7 S. R. 22 W., all referred to G. & S. R. M., and Secs. 4, 9, 17, 19, 20, 30 and 31 of T. 15 S. R. 24 E., referred to S. B. M. and that the United States intends to and will construct and maintain within said Yuma County, a canal and system of canals extending from a point of diversion on the west bank of the Colorado River immediately above the said Laguna dam to the international boundary line between the United States and Mexico.

This water will be diverted by means of a diversion dam and will be conveyed through canals, flumes, wood steel and cement pipes, to the place of intended use, the size of the main canal will be 13 100 feet wide on the bottom and 10 feet deep, or of such dimensions as will give it an equivalent capacity. The size of

the conduits are to be such as to give them sufficient capacity to carry the amount of water required.

J. B. LIPPINCOTT.

Witness-:

L. B. BRAINARD,  
*Yuma, Arizona.*

DANIEL NELSON,  
*Yuma, Arizona.*

*Affidavit.*

TERRITORY OF ARIZONA, *County of Yuma, ss:*

L. B. Brainard, being duly sworn deposes and says that on July 8th, 1905, he did on behalf of the United States of America, post a notice of appropriation of water of which the foregoing is a copy for 3,000 cubic feet per second of the water of the Colorado River, on a small Mesquite tree on the left bank of the Colorado River, in Sec. 14, T. 7 S. R. 22 W., G. & S. — M., being more particularly described as on the line of the proposed Laguna dam as now surveyed and located by the Reclamation Service, and 15 feet from the southeasterly abutment of said dam.

L. B. BRAINARD.

Subscribed and sworn to before me, a notary public, in and for the County of Yuma, and Territory of Arizona, this 10th day of July, A. D. 1905.

P. J. MILLER,  
*Notary Public.*

[SEAL.]

14 My commission expires May 20th. 1909.

Recorded at request of L. B. Brainard July 10th. 1905, at 10 a. m.

J. M. POLHAMUS,  
*County Recorder, Yuma County."*

That the lands described in the last of the above mentioned appropriations, are the same lands lying below the points of diversion named in the water rights locations belonging to your orator, and that all of said lands are capable of being irrigated, by its system when the same shall be extended and completed in accordance with its plans and intentions, and more than twenty thousand acres of said lands lie below its main canals as already completed and are capable of now being irrigated therefrom, and more than five thousand acres of the same are now being irrigated therefrom, and that the lands described in said last mentioned notice of appropriation, are the only lands capable of being irrigated by water taken from the Colorado River at the points of diversion mentioned in either of the said notices of appropriation.

Seventh. Your orator further alleges that the said appropriations of water were made pursuant to a purpose and intention on the part of defendant to build, maintain and operate, in the name of and at the

expense of the United States, an irrigation system which should compete with that belonging to your orator, in the furnishing of water to the owners and prospective owners of the land mentioned in the last above described notice of appropriation; that pursuant to said

15 purpose and intention the agents of the defendant, by his direction, have entered upon and carried on, during the last three years, an active campaign to induce the water users and prospective water users, in the Yuma Valley, all of whom settled in the said valley as the result of the enterprise of your orator, and most of whom had taken and paid for the right to receive water from your orator's system, to sign an agreement to take water exclusively from the Government system, and during all of said time and at the present time, said agents have been and are carrying on said campaign, by urging upon said water users and prospective water users, in private conversation, in the public prints and at public meetings, that your orator will be unable to successfully operate its system, that the United States is a strong, powerful and rich corporation, and can and will complete a system which will furnish water for all time in sufficient quantities and at rates and upon terms more advantageous than those offered by your orator, and that your orator if left in independent control of the irrigation field, will deal unfairly with its customers and exact from them unreasonable and exorbitant tolls for water furnished, all of which statements are untrue so far as they relate to the ability of your orator to successfully operate its system and so far as they relate to the purpose or intention or future action of your orator if left in control of the irrigation business of the said Yuma Valley; yet, notwithstanding said fact, many of the water users and prospective water users who had intended to patronize your orator's system and who had purchased the right to receive water from it, have, to the great damage and injury of your orator,

16 been induced by said representations to sign an agreement to take water exclusively from the government, being moved thereto not only by said representations, but by the official position of the defendant and his agents as the supposed representatives in the matter of building an irrigating system, of the government of the United States, and unless defendant be restrained and enjoined as hereinafter prayed, said campaign will be still further carried on by the defendant and his said agents, with the likelihood and strong probability that your orator will be ruined and bankrupted as the result thereof.

Eighth. That pursuant to his said purpose and intention, the defendant has caused plans to be drawn for an irrigation system to water the said lands in the Yuma Valley, which plans include dams in the Colorado River, reservoirs for the storage of water, headgates to take out water from the said river at the points of diversion mentioned in the said notices of appropriation, and main canals, ditches and laterals for distribution of the water over said lands, and is now causing said system to be built and constructed with money drawn from the Treasury of the United States; that one of the dams across the Colorado River now being so built and constructed, is situated in the said river above the point where your orator diverts, and has the

right to divert, its water from the said river; that said dam is intended and designed for the purpose, and will have the effect of creating a settling basin for the sediment carried by the waters of the said river, and that said dam is provided with large sluice gates, which under the said plans are to be opened at stated times and the sediment and debris collected in the basin washed out through said sluice gates into the channels of the river below; that the waters of the river, when flowing over said dam, free from its natural sediment, will pick up the sediment in the channel below and will scour the said channel and reduce it below the intakes of the canals of your orator; that the said waters when allowed to flow through the sluice gates will carry an enormous excess of sediment which will flow into the headgates and canals of your orator and will cause them to fill up with said sediment and to become unserviceable except at a ruinous expense; that the said dam is a necessary part of the system designed by the defendant and that said system could not be successfully carried on without it, and your orator avers that the building of said dam and its maintenance and operation as devised and intended, will destroy your orator's entire irrigating system, and will constitute a taking of its property within the meaning of the Constitution of the United States.

Ninth. That the plans so drawn and now being carried out, as aforesaid, by the defendant, provide for a main canal on higher ground than the canals of your orator and entirely encircling and enclosing the latter, from which main canal it is proposed to extend subsidiary canals and laterals to the lower ground now occupied by your orator's canals and laterals; that the said subsidiary canals and laterals will cut and destroy and render valueless the canals and laterals of your orator; that the waste water from the system being built by defendant, will have no place to flow except through the canals and laterals of your orator, and that said waste water, not being subject to the control of your orator, will interfere with its system and practically render the same valueless, and that the building, operation and maintenance of the system devised by defendant, will, because of the facts stated in this paragraph, constitute a taking of your orator's property within the meaning of the Constitution of the United States.

Tenth. That the plans so drawn and now being carried out as aforesaid by the defendant, provide for a levee to be built along the east bank of the Colorado River, at points above and below where your orator takes its water from said river and where alone it has the right to take said water, said levee being intended both as protection against overflow in periods of high water, and as a structure to carry an aqueduct or canal; that said levee is a necessary part of said system; that said defendant, by his agents, is now causing said levee to be constructed and said work has now reached the neighborhood of the headgate of your orator's principal canal, which is constructed on land owned by your orator in fee, and your orator alleges that if said headgate be built with openings or gaps at the headgates maintained by your orator, that the effect will be to concentrate the force of the volume of the waters, at periods of high



water, at said headgates, and that the force of the water at said points at said times will be such as to render it impossible to maintain the said headgates, except at a ruinous expense, and that for the reason stated the building of the said levee will constitute a taking of your orator's property within the meaning of the Constitution of the United States. Your orator further alleges that the defendant, his agents and servants, have entered by force and violence, and against your orator's expressed will and command, the land owned by it in fee, on which the headgate of its principal canal is located, and are

19 now proceeding to build the said levee thereon; that your orator has heretofore built a levee about three miles long on the east bank of the river, above its first intake, at great expense, for the purpose of protecting its own system and works, to which levee it has title from the owners of the land on which it stands, and your orator alleges that the defendant, his agents and servants, have taken possession of said levee of your orator, with force and violence, and against the will and command of your orator, and are proceeding to utilize the same as a part of the levee being built by the said defendant, and that all the act- and things done and being done in this paragraph alleged, on the part of the defendant, his agents and servants, have been done and are being done, without any offer or tender of compensation to your orator by the said defendant or any one for him, and that the said action is arbitrary and unlawful, is violative of the provisions of the Federal Constitution intended to secure the rights of persons and property and is taken by the defendant under color of and by virtue of the power of his official position. Your orator further avers that it is informed and believes, and on such information and belief charges, that it is the purpose and intention of the defendant, his agents and servants to maintain possession of your orator's property, and to take possession of still other parts not yet entered on, and to build the said levee over and across the headgates of your orator, and thereby to close the same and prevent your orator from obtaining any water from the Colorado River for its irrigating system, and that they intend to do this without making or offering or intending to make to your orator any compensation for the damage and injury thereby inflicted on it.

20 Eleventh. Your orator further alleges that if the said irrigation system be built, constructed and maintained, as now designed and intended by the defendant, it will introduce competition between that system and the system of your orator, which will be injurious and detrimental, if not ruinous, to your orator; that the defendant is constructing and causing to be constructed his said system in the name of the United States and with the money of the United States, but without the authority of any valid law of the United States, and that said action is an infringement and trespass on your orator's property rights and should be enjoined and restrained.

Twelfth. That the defendant has offered to your orator the sum of forty-five thousand dollars for all its property and rights in said irrigation system, which sum is less than one-eighth of its actual cost



and less than one-eleventh part of its actual value, which offer your orator refused. Defendant has never made any other or further offer of compensation, and has refused and declined the offer of your orator to submit the question of the sum or amount to be paid to your orator to arbitration or to a friendly suit in the Court of Claims, and your orator is informed and believes and on such information and belief charges, that unless your orator shall accept the grossly inadequate sum offered for its property, that defendant and his agents, intend to and will, arbitrarily and in derogation of your orator's rights, and without making it compensation, carry out and execute the plans for an irrigation system heretofore described, taking possession of such parts of your orator's system as may be deemed valuable, and destroying and making your orator's entire

21 system worthless and valueless, because of the incompatibility of the two systems heretofore alleged.

Thirteenth. That the defendant alleges and pretends that he is authorized and required in his capacity as Secretary of the Interior, to cause the said irrigating system to be constructed, and to take the action with respect thereto hereinbefore set forth and alleged, by virtue of the Act of Congress entitled, "An act to appropriate the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, but your orator charges the contrary to be the truth, and alleges that the said Act of Congress is unconstitutional, null and void, because it provides for the payment of money out of the Treasury of the United States without an appropriation first being made, because said act delegates to the Secretary of the Interior, in necessary and essential parts, legislative power, and because the subject matter of the said act is beyond the scope of the power of the Federal government.

Your orator further charges that the action of defendant in the premises as hereinbefore set forth and alleged, is illegal and without authority, because contrary to and violative of the terms of the Act of Congress before referred to, in that said action is an interference without the consent of your orator, with the rights of your orator in

22 its water and its water system, vested in it and acquired by it under the laws of the Territory of Arizona.

Your orator further charges that the action of defendant in the premises is illegal and oppressive, and constitutes an invasion of your orator's property rights, because the said action constitutes a taking of its property for public use without just compensation.

Fourteenth. Your orator further avers that it made known to the defendant, his agents and servants, before the doing of any of the acts hereinbefore complained of, what its rights were in the premises, and that the said acts and proposed acts were an invasion of its said rights and a destruction of its property, and your orator then and at all times since protested against such acts and proposed acts, and warned the defendant, his agents and servants, that it would resort to the courts for the protection of its rights under the Constitution and laws of the United States if said acts were persisted in, and everything done by the defendant, his agents and servants in the premises

has been done with full knowledge that your orator had not acquiesced therein, that it at all times protested thereat, and that it proposed to go into the courts to restrain and enjoin defendant if he persisted in his illegal and inequitable conduct.

Fifteenth. Your orator further alleges that it is powerless to resist the illegal and oppressive action, and threatened action, of the defendant and his agents, hereinbefore complained of; that said action has damaged your orator, by the depreciation of its property and the diminution of its revenues, more than fifty thousand dollars, and is

23 inflicting continuous and increasing damage as the scheme and plans of the defendant and his agents are developed and carried into effect; that when fully developed and carried into effect the said schemes and plans will have destroyed your orator's property and bankrupted it, and that it has no remedy at law for the injury inflicted on it, or if it have any remedy it will be partial, inadequate and incomplete, and that the interposition of this court is essential to prevent irreparable injury to it and to prevent a multiplicity of suits.

Wherefore your orator prays, the premises considered:

First. That a writ of subpoena of the United States of America, directed to the defendant Ethan Allen Hitchcock, Secretary of the Interior of the United States, issue out of this court, directing and requiring him to appear on a day certain and answer this bill of complaint, but without oath, all answers under oath being hereby waived, and to stand and abide such orders and decrees as the court may from time to time adjudge and enter in the premises.

Second. That the defendant, his agents and servants, may be perpetually enjoined and restrained from further prosecuting and from completing the irrigating system now being built and constructed at and near Yuma, Arizona Territory, by and under the direction of the said defendant as hereinbefore alleged, and from completing or further prosecuting the work of building the dam in the Colorado River as hereinbefore alleged, and the levee on the east bank of the Colorado River as hereinbefore alleged, and from doing any act or thing in connection with the plans for an irrigation system now being constructed by and under the direction of the defendant, which will have the effect of interfering with, destroying or in any wise im-

24 pairing the irrigating system, or any part thereof, now being maintained and operated by your orator, as hereinbefore alleged, and that they be perpetually enjoined and restrained from continuing to trespass on the lands and property of your orator as in this bill alleged, or from renewing said trespass on said lands and property, or from committing other and further trespasses on any other of the lands and property of your orator, and that pending a final hearing the defendant, his agents and servants, may be temporarily enjoined and restrained, as hereinbefore prayed.

Third. That this Honorable Court cause an account to be taken of the injury and damage done to your orator up to the present time by reason of the illegal acts of the defendant, his agents and servants, as in the bill alleged, and that this Court render judgment against the

defendant in favor of your orator for such sum as will compensate it for said injury and damage.

Fourth. For such other and further relief as shall be meet and agreeable to equity and for costs of suit.

GEO. H. PATRICK,  
HAPPY & HINDMAN,  
TURNER & GERAGHTY,  
*Solicitors for Plaintiff.*

GEORGE TURNER, *Counsel.*

STATE OF WASHINGTON, *County of Lincoln, ss:*

On this 8th day of November, 1905, before me personally appeared John F. Green, who made solemn oath that he is an officer, to  
25 wit, President of the plaintiff corporation in the above cause; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

[NOTARIAL SEAL.]

A. G. MITCHUM,  
*Notary Public in and for the State of Wash-  
ington, Residing at Harrington, Washington.*

*Subpœna to Answer.*

Issued November 24, 1905.

In the Supreme Court of the District of Columbia.

No. 25864, Equity Docket.

IRRIGATION LAND & IMPROVEMENT Co., Complainant,  
*against*  
ETHAN ALLEN HITCHCOCK, Sec't'y, Defendant.

The President of the United States to Ethan Allen Hitchcock, Secretary of the Interior, Defendant:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays, and answer the exigency of the original bill, under pain of attachment, and such other  
26 process of contempt as the Court shall award.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, the 24<sup>th</sup> day of Nov. A. D. 1905.

[SEAL.]

JOHN R. YOUNG, *Clerk,*  
By F. E. CUNNINGHAM,  
*Assistant Clerk.*

MEMORANDUM.—That the defendant, herewith served, is to enter — appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

*Marshal's Return.*

Returned Nov. 27", 1905.

Summoned defendant personally Nov. 25, 1905.

AULICK PALMER, *Marshal*.  
S.

27

*Order for Appearance.*

Filed December 4, 1905.

In the Supreme Court of the District of Columbia, the Fourth Day of  
December, 1905.

Equity. No. 25864.

IRRIGATION LAND & IMPROVEMENT Co., Complainant,

*vs.*

ETHAN ALLEN HITCHCOCK, Defendant.

The clerk of said Court will enter the appearance of Frank L. Campbell, Assistant Attorney-General, and Joseph R. Webster, Assistant Attorney, as attorneys for the defendant in the above-entitled cause.

FRANK L. CAMPBELL,  
Per PAUL E. SLEMAN,  
*Attorney for Defendant.*

*Demurrer.*

Filed May 18, 1906.

In the Supreme Court of the District of Columbia.

No. 25864. In Equity.

THE IRRIGATION, LAND AND IMPROVEMENT COMPANY, a Corporation,  
Plaintiff,

*v.*

ETHAN ALLEN HITCHCOCK, Secretary of the Interior of the United  
States, Defendant.

The Demurrer of the Above-named Defendant, Ethan Allen Hitchcock, Secretary of the Interior of the United States, to the  
28 Bill of Complaint of the Above-named Plaintiff.

The defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the bill of complaint contained to be true in such manner and form as the same are therein set forth

and alleged, doth demur to said bill, and for cause of demurrer sheweth:

1. That it appears by plaintiff's own showing by the bill that the subject and matters therein complained of are not within the jurisdiction of this honorable court, and are not cognizable therein, but belong to the proper jurisdiction of, and are cognizable only by, the District Court of the First Judicial District of the Territory of Arizona, in and for the county of Yuma.

2. That no cause cognizable in equity is alleged in the bill.

3. And further demurring separately to those several parts of the bill contained in paragraphs severally numbered:

(a) Sixth and seventh;

(b) Eighth;

(c) Ninth;

(d) Tenth;

(e) Eleventh;

(f) Twelfth;

and to each thereof severally, defendant avers that no cause cognizable in equity is therein alleged, and that the facts therein alleged do not make a cause of action against defendant.

29 Wherefore, and for divers other good causes of demurrer appearing on the bill, defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any answer to the said bill; and he humbly prays to be hence discharged with his reasonable costs.

FRANK L. CAMPBELL,  
*Assistant Attorney-General for the Interior Department,  
Solicitor and of Counsel for Defendant.*

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

FRANK L. CAMPBELL,  
*Assistant Attorney-General,  
Interior Department.*

January —, 1906.

30 *Submission on Jurisdiction.*

Filed May 18, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

No. 25864. In Equity.

THE IRRIGATION, LAND AND IMPROVEMENT COMPANY, a Corporation,  
Plaintiff,

v.

ETHAN ALLEN HITCHCOCK, Secretary of the Interior of the United States, Defendant.

It is hereby stipulated between the parties, subject to the approval of the Court, to submit the above entitled cause, on briefs of which

mutual service is admitted, at the present term, upon the single question of the jurisdiction of the Supreme Court of the District of Columbia to entertain this suit against the Secretary of the Interior of the United States; all other questions being postponed to the determination under this submission.

Washington, D. C., May 17, 1906.

GEORGE TURNER,  
HAPPY AND HINDMAN,  
GEO H. PATRICK,  
*Plaintiff's Solicitors.*

FRANK L. CAMPBELL,  
*Ass't Att'y Gen. of the U. S.,*  
J. R. WEBSTER,  
*Assis't Att'y, Defendant's Solicitors.*

31 *Order for Calendaring Demurrer.*

Filed May 23, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, the 23d Day of May, 1906.

Equity. No. 25864.

THE IRRIGATION, LAND AND IMPROVEMENT CO.

*vs.*

ETHAN ALLEN HITCHCOCK, Sec'y of the Interior.

The Clerk of said Court will please calendar Demurrer for June term, 1906.

GEO. H. PATRICK,  
*Attorney for Plaintiff.*

32 *Final Decree.*

Filed June 14, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia. In Equity.

Eq. #25864, Doc. 57.

THE IRRIGATION, LAND AND IMPROVEMENT COMPANY, a Corporation,  
Plaintiff,

*v.*

ETHAN ALLEN HITCHCOCK, Secretary of the Interior of the United States, Defendant.

This cause coming on to a final hearing upon the Plaintiff's Bill of Complaint and the Defendant's Demurrer thereto, and the same having been fully argued by counsel, and being understood by the court, it is considered that the subject and matters therein complained

of are not within the jurisdiction of this court, and are not cognizable herein; and the Plaintiff electing not to amend but standing upon its Bill, it is *ordered, adjudged, and decreed* that the said Bill of Complaint be and the same hereby is dismissed out of this court for want of jurisdiction, at Plaintiff's costs, which are taxed. And the said Plaintiff, in open court, prays an appeal from the aforesaid judgment and decree of this court to the Supreme Court of the United States, which is allowed; and the appeal bond is fixed in the sum of one hundred dollars, conditioned and to be approved as required by law and the rules of court. And the question of jurisdiction alone is certified to the said Supreme Court of the United States for decision.

In open court, this fourteenth day of June, one thousand nine hundred and six.

WENDELL P. STAFFORD,  
*Judge of the Supreme Court of the District  
of Columbia, Presiding.*

33

*Allowance of Appeal.*

Filed June 28, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia. In Equity.

No. 25864, Doc. 57.

THE IRRIGATION, LAND AND IMPROVEMENT COMPANY, a Corporation,  
Plaintiff,

*vs.*

ETHAN ALLEN HITCHCOCK, Secretary of the Interior of the United  
States, Defendant.

Come the parties to the above entitled cause, by their respective attorneys, and the plaintiff, in open court, abandons the appeal heretofore, at a former day of this term, to wit: on June fourteenth, nineteen hundred and six, prayed by it and allowed by the Court to the Supreme Court of the United States, and prays an appeal from the judgment and decree of this Court entered against it on the aforesaid fourteenth day of June, instant, dismissing the bill of complaint herein, to the Court of Appeals of the District of Columbia, which is allowed, the bond being fixed in the sum of one hundred dollars; *and it is further ordered* that the plaintiff may, in lieu of other form of security, deposit the amount of said bond, to-wit: the sum of one hundred dollars, in cash, with the Clerk of the Supreme Court of the District of Columbia, which deposit shall stand as the bond for costs of appeal herein, and be held under and be subject to the conditions required by law and the rules of court in case of such appeal bond; which is done.

In open court, this twenty-eight-day of June, one thousand nine hundred and six.

WENDELL P. STAFFORD,  
*Justice Supreme Court of the District  
of Columbia, Presiding.*



34

*Memorandum.*

June 28, 1906.—\$100.00 deposited by appellant in lieu of appeal bond.

35 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 34, inclusive, to be a true and correct transcript of the record, as per Rule 5 of the Court of Appeals of the District of Columbia, in cause No. 25864, in equity, wherein The Irrigation Land and Improvement Company, a corporation, is Plaintiff, and Ethan Allen Hitchcock, Secretary of the Interior &c., is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 13<sup>th</sup> day of July, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1716. The Irrigation Land and Improvement Company, a corporation, appellant, *vs.* Ethan Allen Hitchcock, Secretary of the Interior of the United States. Court of Appeals, District of Columbia. Filed Aug. 10, 1906. Henry W. Hodges, clerk.